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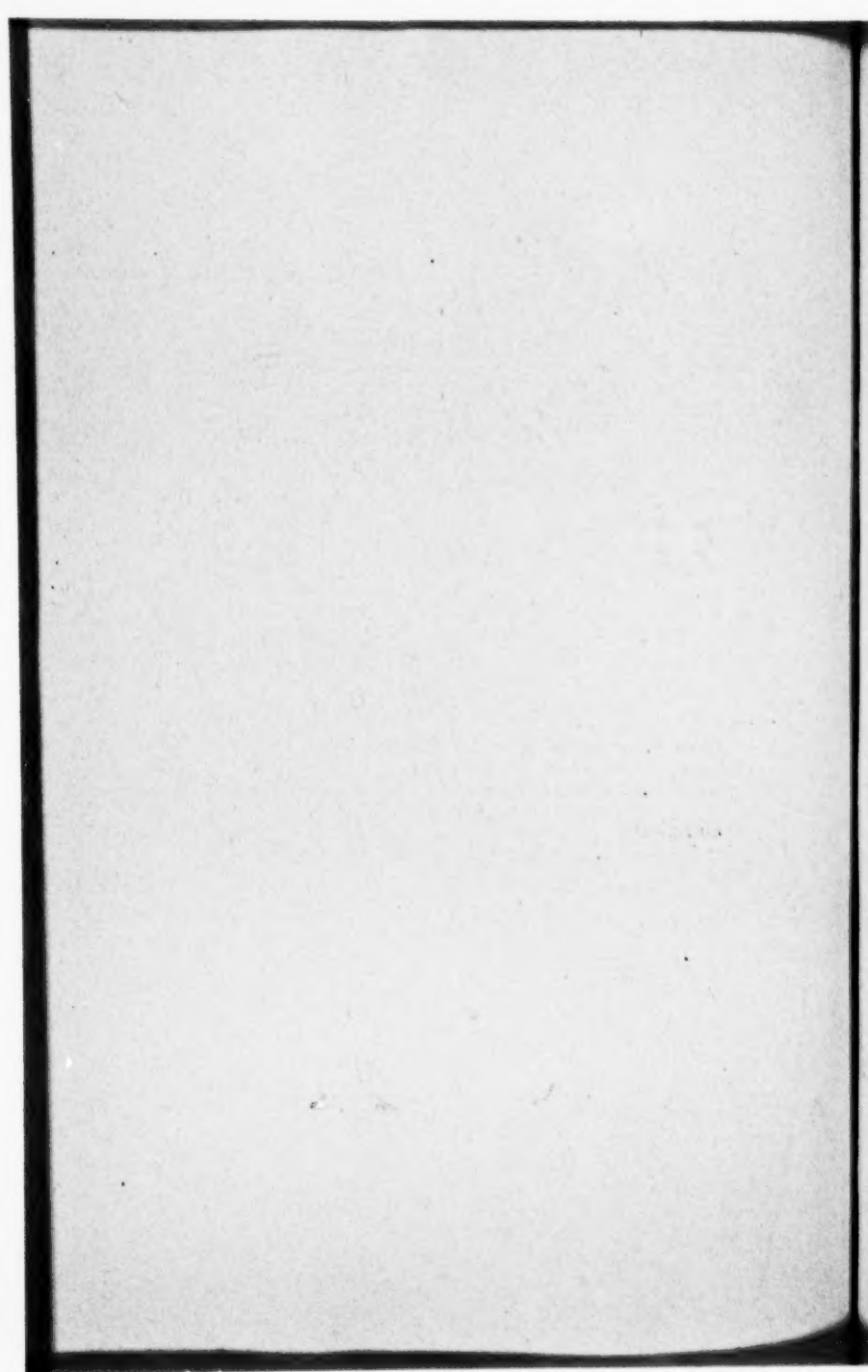
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(1)



In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 748

UNITED STATES, PETITIONER

v.

B-W CONSTRUCTION COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Court of Claims of the United States entered in the above-entitled case on November 5, 1945.

OPINION BELOW

The opinion of the Court of Claims (R. 41-48) has not yet been officially reported.

JURISDICTION

The judgment of the Court of Claims was entered on November 5, 1945 (R. 48-49). The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended.

QUESTIONS PRESENTED

1. Whether under the standard form of Government construction contract the Government is liable to the building contractor for delay caused by it in the course of the performance of the contract where the contractor completed performance within the contract period as extended.

2. Whether; if the Government is so liable, the court below was correct in assessing as damages (a) a portion of the contractor's home office overhead and (b) the rental value of certain equipment during the period of delay.

STATEMENT

On April 23, 1932, respondent, an Illinois corporation with its principal office in Chicago, Illinois, entered into a contract with the United States to build an extension to and remodel and enlarge the Post Office at Washington, D. C., at the contract price of \$2,999,000 (Fdg. 1; R. 18, 41-42). The work was to be completed within 720 days from respondent's receipt of the notice to proceed (Fdg. 1; R. 18, 42). During the progress of the work, respondent requested and was granted extensions of time aggregating 362 days, extensions of 267 days having been granted because of change orders and 95 days because of strikes, bad weather, and defaulting subcontractors (Fdg. 1; R. 18, 42). The work was completed within the contract time as extended (Fdg. 1; R. 18, 42).

Thereafter, on April 14, 1938, respondent brought this suit in the Court of Claims (R. 1-9), alleging, *inter alia*, that it had suffered damages due to (1) petitioner's failure promptly to correct errors made by it in the contract drawings and specifications (R. 3); (2) petitioner's failure promptly to make certain necessary changes in the specifications (R. 3-4); (3) petitioner's suspension of certain work while it considered making changes in the plans and specifications (R. 4); (4) errors made by petitioner in the contract drawings and plans and petitioner's failure promptly to correct them (R. 4); (5) petitioner's failure to surrender use of an elevator in accordance with the specifications (R. 4); and (6) petitioner's failure promptly to install, repair, and remodel certain elevators, as contemplated by the contract (R. 4). Respondent also sought recovery, *inter alia*, for certain work, performed by it in connection with cutting a conveyor opening, which allegedly was not required by the contract (R. 7).

The Court of Claims found that the petitioner's errors "and its long delays in correcting them and in deciding questions and acting on change proposals * * * together delayed the final completion of the contract for a period of 60 days" (Fdg. 17; R. 30). The court entered judgment for respondent for \$19,596.38 (R. 41, 48-49), said sum including (1) all the "losses and expenses"

found by the court to have been incurred by respondent because of delays caused by petitioner (Fdgs. 15-17; R. 29-30), and (2) \$1,040.73, found by the court to be the reasonable price of the extra work involved in making the conveyor opening required by the contract (Fdg. 26; R. 36-37). The "losses or expenses" which the court allowed respondent to recover included \$5,875, representing the overhead of respondent's Chicago office¹ allocable to the Post Office job on the basis of the ratio of the monthly gross of the Post Office job to the gross of all jobs being performed" by respondent during the last 60 days' work on the Post Office job; and \$548, representing the "rental value" of a compressor, three adding machines, and four typewriters for said 60 days (Fdg. 17; R. 30).¹

¹ The court below found respondent also incurred the following losses or expenses as the result of petitioner's delays: (1) overhead of respondent's Washington, D. C., office "chargeable to the Post Office job during the last 60 days prior to the substantial completion of the contract," \$8,500 (Fdg. 17; R. 30); (2) "insurance expense (not included in overhead) * * * during said 60-day period," \$138 (Fdg. 17; R. 30); (3) "actual storage charges," \$254.65 (Fdg. 15; R. 29); (4) the cost of installing a temporary heat connection, \$250 (Fdg. 16; R. 30); and (5) the cost of renting and operating a "Moretrench System," a device used to get rid of subsurface water (Fdg. 13; R. 28), for 45 days longer than would have otherwise been necessary, \$2,994 (Fdg. 16; R. 29-30). The \$4 discrepancy between the amount of the judgment entered by the court below, \$19,596.38 (R. 41, 48-49), and the sum of all the specific amounts allowed to respondent by the court below, as set forth above, \$19,600.38, is unexplained.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Claims erred:

1. In holding the Government liable to the contractor for delays in the ultimate completion of the job although the contractor completed performance within the contract time as extended.

2. In failing to follow the decision of this Court in *United States v. Blair*, 321 U. S. 730, and its own prior decision in *Leo Sanders v. United States*, C. Cls. No. 45469, decided May 7, 1945, with respect to liability for such delays.

3. In allowing recovery by the contractor of a portion of its main office overhead as damages for such delays.

4. In holding that a contractor with the Government, delayed by the Government in performance of the contract, is entitled to recover such percentage of its main office overhead during the period of delay which the "monthly gross" of the Government job involved bears "to the gross of all jobs" carried on by the contractor during the period of the delay (Fdg. 17; R. 30).

5. In allowing respondent the "rental value" of equipment during the period of delay.

6. In entering judgment for respondent.

REASONS FOR GRANTING THE WRIT

In this case, as in *United States v. Henry Ericsson Company*, No. 701, this term, now pending on a petition for a writ of certiorari, we submit

that the court below was in error both in (1) holding, in the circumstances presented, that the Government was liable for having delayed completion of respondent's contract, and (2) assessing main office overhead and the "rental value" of equipment as part of the damages for such delay. The questions presented and the reasons for granting the writ in this case are identical with those in the *Ericsson* case.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

J. HOWARD McGRATH,
Solicitor General.

JANUARY 1946.

